

STEVE BULLOCK  
Montana Attorney General  
KELLEY HUBBARD  
Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
(406) 444-2026

NANCY SWEENEY  
CLERK DISTRICT COURT  
FILED BY L. DOWELL  
DEPUTY

2009 OCT 30 A 9:09

COUNSEL FOR THE STATE OF MONTANA

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

---

In the matter of:	) Cause No. <u>ADV-2009-1009</u>
	)
STUDENT LOAN XPRESS, INC.,	) <b>ASSURANCE OF VOLUNTARY</b>
	) <b>COMPLIANCE</b>
Respondent.	)
	)

---

**ASSURANCE OF VOLUNTARY COMPLIANCE**

This Assurance of Voluntary Compliance or Assurance of Discontinuance, ("Assurance"), is voluntarily entered into between Student Loan Xpress, Inc. ("SLX" or "Respondent") and the Attorneys General of the states of California, Florida, Georgia<sup>1</sup>, Idaho, Illinois, Missouri, Montana, Nevada, Oklahoma, Oregon, Utah<sup>2</sup> and Washington ("States" or "Attorneys General"). This agreement is solely intended to resolve the States' investigation into whether SLX, including its officers, directors, employees and agents, engaged in any unlawful or deceptive trade practices relating to private student

---

<sup>1</sup> With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions for the State of Georgia. Hereafter, references to the "States" or "Attorneys General," as it pertains to Georgia, includes the Administrator of the Fair Business Practices Act.

loans for students of Silver State Helicopters LLC ("Silver State"), or the acquisition of such loans from originating lenders, including Liberty Bank, N.A. ("Liberty Bank").

### **BACKGROUND**

1.1 Silver State began in 2002 as a small helicopter pilot training school near Las Vegas, Nevada. Silver State expanded quickly by signing up new students through sales presentations or seminars around the country.

1.2 At its zenith, Silver State operated 34 flight schools in 17 states, and had approximately 2700 students on its rolls. Tuition at the school typically was \$69,900 for each student. The course of instruction was intended to be completed within 12-18 months, resulting in the student receiving the following certifications or ratings: (i) Private Pilot Certificate (Rotorcraft), (ii) Commercial Pilot Certificate (Rotorcraft), (iii) Certified Flight Instructor Certificate (Rotorcraft), (iv) Instrument Rating, (v) External Load Proficiency Course, and (vi) Turbine Transition. The certifications and rating listed in (i)-(iv) are referred to as "FAA Certifications" because they are recorded and available for review on the Federal Aviation Administration website, <https://amsrvs.registry.faa.gov/airmeninquiry>.

1.3 Students allege that the training provided by Silver State was inadequate, compounded by a lack of teachers, too few flight simulators, and a lack of helicopters with which to train. As a result, many students left the school without obtaining all possible certifications. More than half of the students who were enrolled at the date of the school's closure and whose loans are held by SLX did not receive a single certification. Silver State ultimately filed a Chapter 7 bankruptcy petition in Nevada and ceased operations in February 2008. Later in

---

<sup>2</sup> With regard to Utah, the Utah Division of Consumer Protection is statutorily authorized to undertake consumer protection functions for the State of Utah. Hereafter, references to the "States" or "Attorneys General," as it pertains to Utah, include the Utah Division of Consumer Protection.

2008, putative private class action lawsuits were filed in Florida, California, Nevada and South Carolina on behalf of certain former Silver State students.

1.4 SLX was founded in January 2002. SLX's primary business was to originate and to acquire higher education loans. From August, 2005 to September, 2007, SLX was the preferred student loan provider for Silver State. During this time period, SLX acquired approximately \$180,000,000 in Silver State student loans originated by Liberty Bank (the "Loans"). The Loans were issued pursuant to promissory notes executed by the borrowers and co-signors if applicable (the "Promissory Notes").

1.5 The Promissory Notes did not contain the language set forth in 16 CFR 433.2, known as the Federal Trade Commission's Holder Rule (the "Holder Rule"). The Holder Rule language, some States contend, is required by several state statutes. The States and SLX disagree as to whether the Holder Rule notice language was required in the Promissory Notes under the facts of this matter, and as to the legal implications of the notice language being absent, and no finding or admission is made here in either regard.

1.6 In 2007 and early 2008, several of the Attorneys General commenced consumer protection investigations into the business practices of Silver State based upon complaints from students.

1.7 The States expanded their consumer protection investigations to include the marketing, originating and servicing of student loans for Silver State students, and the acquisition of such loans from originating lenders, including Liberty Bank.

1.8 Several of the States issued Civil Investigative Demands to SLX in order to review documents related to Silver State Loans. SLX cooperated with the

States in their investigation by, among other things, providing numerous documents and data as well as making others available for inspection or review.

1.9 The investigation conducted by the States revealed that SLX engaged in certain acts, practices and omissions which the Attorneys General allege are in violation of their respective consumer protection laws and regulations promulgated thereunder.<sup>3</sup> SLX denies all such allegations and contends that it complied with all laws and regulations in connection with the Silver State Loans.

1.10 The States have determined that it is in the public interest of their respective states and the student borrowers to enter into this Assurance at this time in order to conclude such review and inquiry.

#### **TERMS OF ASSURANCE AS TO FUTURE CONDUCT**

To address the States' concerns regarding the business practices of SLX, SLX and the States have entered into this Assurance and have agreed as follows:

2.1 The duties, responsibilities, burdens, and obligations undertaken in connection with this Assurance shall apply to SLX, its successors and assigns, and its officers and employees.

2.2 SLX shall comply with all applicable provisions of the Truth in Lending Act, 15 U.S.C. § 1601, et seq., and all applicable provisions of its promulgating Regulation Z, 12 C.F.R. Part 226, as such statutes and rules are

---

<sup>3</sup> CALIFORNIA – *Business and Professions Code § 17200 and § 17500*; FLORIDA – *Deceptive and Unfair Trade Practices Act*, Fla. Stat. Ch. 501.201 et seq.; GEORGIA – *Georgia Fair Business Practices Act of 1975*, Ga. Code Ann. § 10-1-390, et seq.; IDAHO – *Consumer Protection Act*, Idaho Code Section 48-601 et seq.; ILLINOIS – *Consumer Fraud and Deceptive Business Practices Act*, 815 ILCS § 505/1 et seq. (2006 State Bar Edition); MISSOURI – *Merchandising Practices Act*, Section 407.010 et seq., RSMo.; MONTANA – Mont. Code Ann. § 30-14-101 et seq.; NEVADA – *Deceptive Trade Practices Act*, Nevada Revised Statutes 598.0903 et seq.; OKLAHOMA – *Consumer Protection Act*, 22 O.S. § 751 et seq.; OREGON – *Unlawful Trade Practices Act*, ORS 646.605 to 646.656; et seq.; UTAH – *Consumer Sales Practices Act*, Utah Code Ann. \*\* 13-11-1 through 13-11-22.; and WASHINGTON – *Consumer Protection Act*, R.C.W. 19.86 et seq.

currently promulgated or hereafter amended, in offering non-federally guaranteed education loans ("Private Loans").

2.3 SLX shall comply with all applicable provisions of the Federal Trade Commission's Trade Regulation Rules, 16 C.F.R. Subchapter D, and all applicable provisions of state statutes governing unfair, deceptive or misleading trade practices, as such statutes and rules are currently promulgated or hereafter amended, in offering Private Loans.

2.4 SLX shall comply with all applicable provisions of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., and all applicable provisions of state statutes governing debt collection practices, as such statutes are currently promulgated or hereinafter amended, in the collection of debts incurred pursuant to Private Loans.

2.5 SLX shall not provide negative information to credit reporting agencies with respect to any Private Loan restructured in accordance with the debt forgiveness and restructuring provisions set forth herein, so long as the borrower makes timely payments and otherwise complies with all requirements of the Restructured Loan, as defined below.

2.6 SLX shall in good faith, and in a timely manner notify the appropriate credit reporting agency of any errors or mistakes in credit information which SLX provided to such credit reporting agency regarding persons who attended Silver State and whose Promissory Note is held by SLX as of the effective date of this Assurance, provided such errors or mistakes have been brought to the attention of SLX. The States acknowledge, however, that SLX does not have any control over or right to control the credit reporting agencies.

2.7 Where SLX acts as the preferred provider<sup>4</sup> of Private Loans to students of a private post-secondary, trade or vocational institution not certified or accredited by state or federal authorities (an "Unaccredited Institution"), SLX shall make the following disclosure substantially in the form and manner indicated below, clearly and conspicuously in writing, to each applicant prior to extending a Private Loan:

**NOTE: SLX's provision of loans to students of [Name of Institution] does not constitute an endorsement of [Name of Institution], its principals, or the quality of the education or training offered; or an assurance of [Name of Institution's] current or future financial viability.**

**Loan applicants are encouraged to conduct their own inquiries into all aspects of any school they are considering.**

**Regardless of whether the school fails, closes, or goes bankrupt after part or all of a student's loan has been disbursed to the school on behalf of the student, the student will still owe full repayment of the principal advanced plus, interest, and fees under the loan.**

2.8 SLX shall provide the benefits set forth below to each person whose claims and potential claims against SLX, its predecessors, successors, assigns, officers, employees and agents relating to Silver State Loans are released by operation of law in connection with judicial approval of the proposed nationwide class action settlement in Holman et al. v. Student Loan Xpress, Inc., Case No. 08:CV-00-305-SDM-MAP, pending in the United States District Court for the Middle District of Florida (the "Proposed Class Action Settlement"). In the event that the Proposed Class Action Settlement does not reach its final effective date and is terminated (the "Termination of the Proposed Class Action Settlement"), SLX shall have the option, at its sole discretion, to provide the benefits described below to each person who (i) would otherwise have been eligible to participate in

---

<sup>4</sup> SLX shall be considered a preferred provider of student loans if it either has an exclusive relationship with a school or it provides in excess of 75% of the student loans at a school.

the Proposed Class Action Settlement; and (ii) provides SLX, within sixty (60) days following SLX's election of its option to provide such benefits in accordance with section 2.9 below, with a legally valid release, assignment of claims and transfer of claims (as well as other documents reasonably required by SLX to effectuate the legality of the release, assignment and transfer of claims) in accordance with the terms of the Proposed Class Action Settlement. A summary of the terms of the Proposed Class Action Settlement are annexed to this Assurance as Exhibit A. Such terms will be more fully described in the papers submitted in connection with the judicial approval process of the Proposed Class Action Settlement. Each person who becomes eligible for the benefits set forth below shall be referred to herein as a "Participant."

a. Debt Restructuring and Forgiveness. SLX shall provide each Participant with forgiveness of the principal amount of each Participant's Loan, including any origination fees and capitalized interest as of February 4, 2008 and all uncapitalized interest that had accrued on such principal as of February 4, 2008 (the "Debt"), and shall restructure the Participant's Debt as follows:

- 0 FAA Certifications – 75% forgiveness;
- 1 FAA Certification – 60% forgiveness;
- 2 FAA Certifications – 47.5% forgiveness;
- 3 FAA Certifications – 30% forgiveness;
- 4 FAA Certifications – 20% forgiveness.

b. Ten percent of the above forgiveness percentages shall be irrevocably earned by a Participant upon the Participant's execution of the release, assignment of claims and transfer of claims, and other reasonably required documents as set forth above. The remaining forgiveness shall

become effective only upon the Participant's timely and full repayment of the Restructured Loan, as defined below, and shall be conditioned upon timely and full repayment of the Restructured Loan. Repayment of the Restructured Debt shall be deemed timely and full only if the Participant makes all scheduled payments, including interest and principal payments, within 90 days of the scheduled due date of each such payment until such time that the Restructured Loan has been paid in full.

c. Where a Participant makes timely and full repayment of the Restructured Loan, plus any interest accruing thereon, within the earlier of five (5) years of (i) the final effective date of the Proposed Class Action Settlement, (ii) a date that is sixty (60) days after the court grants final approval of the Proposed Class Action Settlement, or (iii) the Effective Date of the Assurance, SLX shall forgive an additional 2.5% of the Participant's Restructured Debt and the Participant shall be credited or paid such amount.

d. Reduction in Interest. Interest shall not accrue on Participants' Loans from the date that Silver State filed for bankruptcy (February 4, 2008) to the earlier of (i) the final effective date of the Proposed Class Action Settlement, (ii) sixty (60) days after the date on which the court grants final approval of the Proposed Class Action Settlement or (iii) the date of Termination of the Proposed Class Action Settlement (the "Interest Re-Accrual Date").

e. Beginning on the Interest Re-Accrual Date, interest will accrue on a Participant's Restructured Loan at a rate which is three percent (3%) lower than the rate that would be in effect for such period under the terms of the Participant's Loan, provided, however, the interest rate



applicable during any time period will never be reduced below six percent (6%).

f. Restructured Loan. The "Restructured Loan" is the Debt of each Participant (i) reduced by ten percent of the debt forgiveness percentages set forth above; (ii) conditionally restructured in accordance with the additional debt forgiveness that will become effective upon timely and full repayment of the Restructured Loan; and (iii) less any payments made prior to the earlier of the final approval of the Proposed Class Action Settlement or the Effective Date of the Assurance.

2.9 Effective Date of this Assurance. The terms of this Assurance shall become binding and effective only upon (i) execution of the Assurance by all parties; (ii) filing and/or judicial approval of the Assurance in such States for which filing or judicial approval is required by law; and (iii) either: (a) the Proposed Class Action Settlement reaching its final effective date; or (b) the date on which SLX exercises its option to provide the benefits set forth above after Termination of the Proposed Class Action Settlement (the "Effective Date of the Assurance"). SLX shall be deemed to have exercised its option to provide the benefits set forth above by providing written notice to the States within 120 days of the date of Termination of the Proposed Class Action Settlement.

### **PAYMENT TO THE STATES**

3.1 Within thirty (30) days of the Effective Date of this Assurance, SLX shall pay the sum of one hundred twenty five thousand dollars (\$125,000.00) to the Office of the Florida Attorney General, Department of Legal Affairs Revolving Escrow Trust Fund for the benefit of the States. Such sum is to be divided among the Attorneys General as they may agree. The payment may be

used by the Attorneys General for attorneys' fees and other costs of investigation and litigation and/or for future public protection purposes, or be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each signatory Attorney General.

### **GENERAL PROVISIONS**

4.1 SLX and the States agree that this Assurance constitutes a legally enforceable agreement. This Assurance and the rights and obligations of the parties hereunder shall be governed within each of the respective States by the laws of such States in which any enforcement of this Assurance or any action to determine the rights and obligations hereunder is attempted.

4.2 Enforceable By Parties Only. This Assurance may be enforced only by the parties hereto. Nothing in this Assurance shall provide any rights to or permit any person or entity not a party hereto, including any state or attorney general not a party hereto, to enforce any provision of this Assurance. No person or entity not a signatory hereto is a third-party beneficiary of this Assurance. Nothing in this Assurance shall be construed to affect, limit, alter, or assist any private right of action that a consumer or other third party may hold against SLX.

4.3 This Assurance shall be binding on SLX, its successors and assigns, and its officers and employees.

4.4 Modifications or Amendments. To seek a modification or termination of this Assurance for any reason, SLX shall send a written request to the respective Attorney General. The Attorney General receiving the request shall make a good faith evaluation of the then existing circumstances, and after

collecting information he or she deems necessary, make a prompt decision as to whether to agree to the modification or termination of this Assurance. In the event the respective Attorney General denies the modification or termination request, SLX reserves all rights to pursue any legal or equitable remedies that may be available to it. In states where this Assurance is filed with a court, no waiver, modification or amendment of the terms of this Assurance shall be valid or binding unless made by order of the court.

4.5 Monitoring. Upon the written request of the Attorneys General, SLX agrees to provide responsive, non-privileged information, books, records, documents, or testimony (formal or informal) to the Attorneys General for the purpose of monitoring SLX's compliance with this Assurance. SLX shall make the requested information available, within sixty (60) calendar days of the request, at the office of the designated representative Attorney General, or at such other time and/or place as is mutually agreed to in writing by SLX and the requesting Attorneys General. This section shall in no way limit (1) any right of the Attorneys General to obtain documents, records, testimony, or other information pursuant to any law, regulation, or rule, or (2) the effect of the provisions set forth elsewhere in this Assurance.

4.6 Conflicts. Nothing in this Assurance shall be construed as preventing or exempting SLX from complying with any law, rule, or regulation, nor shall any of the provisions of this Assurance be deemed to authorize or require SLX to engage in any acts or practices prohibited by such law, rule, or regulation.

4.7 Preservation of Authority. Nothing in this Assurance shall be construed to limit the authority of the Attorneys General to protect the interests of their respective states or the people of their respective states; provided, however, the Attorneys General agree that this Assurance is sufficient to protect those

interests as they relate to the subject matter of this Assurance and as to the claims released herein and that nothing in this sentence shall be interpreted to limit the provisions of section 5.1. This Assurance shall not bar the Attorneys General or any other governmental entity from enforcing laws, regulations, or rules against SLX for conduct subsequent to or otherwise not covered by section 5.1.

4.8 No Admissions; No Penalty. This Assurance is not intended to be and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of SLX or its predecessors, successors, assigns, officers, employees or agents, or of any fact or any violation of any law, rule, or regulation. This Assurance is made without trial or adjudication of any alleged issue of fact or law and without any finding of liability of any kind. The payment made pursuant to section 3.1 does not constitute, and shall not be construed as, a penalty of any kind.

4.9 Non-Admissibility. The settlement negotiations resulting in this Assurance have been undertaken by SLX and the Attorneys General in good faith and for settlement purposes only, and no evidence of negotiations or communications underlying this Assurance shall be offered or received in evidence in any action or proceeding for any purpose. Neither this Assurance nor any public discussions, statements, or comments with respect to this Assurance by the Attorneys General or SLX shall be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding between the parties arising under this Assurance.

4.10 Entire Agreement. This Assurance is entered into by the parties as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this

Assurance. This Assurance sets forth the entire agreement between the parties. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto.

4.11 Counterparts. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

4.12 Mutually Drafted. This Assurance shall be deemed to have been mutually drafted by SLX and the Attorneys General and shall not be construed against either party as the author thereof.

4.13 Titles and Headers. The titles and headers in this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the document.

4.14 The acceptance of this Assurance by the Attorneys General shall not be deemed approval by the Attorneys General of any of Respondent's business practices, except those mandated herein. Further, neither Respondent nor anyone acting on its behalf shall state or cause to be stated that the Attorneys General, or any other governmental unit, have approved, sanctioned or authorized any practice, act, representation, or conduct of Respondent, except those mandated herein.

4.15 The Respondent agrees that the States shall have the authority to enforce or seek sanctions for violations of the provisions of the Assurance in the duly constituted courts of the States, and evidence of a violation of this Assurance shall constitute prima facie evidence of an act or practice in violation of the consumer protection laws of the States.

4.16 Nothing contained herein shall be construed to waive any individual right of action by any consumer, nor will it be construed as a waiver by the Respondent of any legal right in connection with any action brought by any person or entity not a signatory to this Agreement.

### **RELEASE**

5.1 This Assurance shall constitute a release of the Respondent, Education Funding Resources, LLC ("EFR"), Fifth Third Bank as Eligible Lender Trustee for the Respondent and EFR, respectively, American Education Services / Pennsylvania Higher Education Assistance Agency, Inc., Liberty Bank, N.A., Lutheran Education Assistance Resource Network, and each of their respective officers, directors, employees and agents from liability, to the extent they can be held liable for the Respondent's conduct in connection with Silver State Loans; and a resolution of all actual or potential civil claims, causes of action, damages, fines, costs or penalties that were or could have been asserted at any time up to and including the Effective Date of the Assurance by the States for alleged violations of the States' consumer protection laws cited in footnote two herein and rules or regulations promulgated thereunder; as well as all laws enforced by the consumer protection divisions of the States Attorneys General offices that are based upon the Respondent's conduct in connection with Silver State Loans.

5.2 Notwithstanding the foregoing, a State may institute an action or proceeding to enforce the terms and provisions of this Assurance. Prior to seeking enforcement of this Assurance, its Attorney General shall contact the Respondent and provide a written notification of the alleged violations and shall provide the Respondent reasonable opportunity to attempt to resolve the State's concerns. If a mutually acceptable resolution is not reached, the Attorney General agrees to

provide the Respondent thirty (30) days advance written notice prior to instituting any proceedings alleging a violation of this Assurance. Such notification shall be transmitted by facsimile or electronic mail and by overnight mail to counsel for the Respondent at:

Student Loan Xpress, Inc.  
c/o CIT Group Inc.  
1 CIT Drive, 3rd Floor  
Livingston, NJ 07039-5703  
Attention: Deborah A. Reperowitz, Esq.  
Email: [deborah.reperowitz@cit.com](mailto:deborah.reperowitz@cit.com)  
Fax: (973) 740-5595  
Telephone: (973) 535-3586

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Attention: Andrew E. Tomback, Esq.  
Email: [atomback@milbank.com](mailto:atomback@milbank.com)  
Fax: (212) 822-5971  
Telephone: (212) 530-5971

Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Attention: Grace M. Gilligan, Esq.  
Email: [ggilligan@milbank.com](mailto:ggilligan@milbank.com)  
Fax: (212) 822-5437  
Telephone: (212) 530-5437

**IN WITNESS WHEREOF**, SLX and the States, through their fully authorized representatives,  
have agreed to this Assurance:

Student Loan Xpress, Inc.

By: 

Name: Deborah A. Reperowitz

Title: ~~Senior Vice President and~~ Chief Litigation Counsel

Date: Oct. 22, 2009

Counsel for Student Loan Xpress, Inc.

By: 

Name: Andrew E. Tomback

Firm: Milbank, Tweed, Hadley & McCloy LLP

Date: October 19, 2009

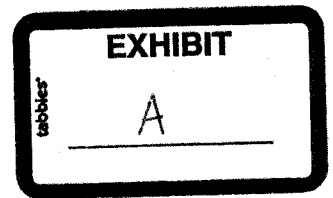


DATED this 29th day of October, 2009.

STEVE BULLOCK  
Montana Attorney General  
Justice Building  
P.O. Box 201401  
Helena, MT 59620-1401

By: Kelley L. Hubbard  
KELLEY L. HUBBARD  
Assistant Attorney General

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**



MICHAEL HOLMAN, ROBERT  
PERROTTA, KEVIN WILHELMY,  
MATTHEW ARNOLD, CHRISTOPHER  
KORTE, and DEBORAH PECHACEK,  
on behalf of themselves and all others  
similarly situated,

CASE NO.: 8:08-cv-00305-SDM-MAP

Plaintiffs,

v.

STUDENT LOAN XPRESS, INC.,

Defendant.

**JOINT MOTION FOR (1) PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT; (2) APPROVAL OF MANNER AND FORM OF NOTICE;  
(3) APPROVAL OF CLAIM FORMS; AND (4) ESTABLISHMENT OF A  
PROPOSED SCHEDULE FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

Plaintiffs Michael Holman, Robert Perrotta, Kevin Wilhelmy, Matthew  
Arnold, Christopher Korte and Deborah Pechacek and Defendant Student Loan Xpress, Inc.  
("SLX") jointly move for (1) preliminary approval of a proposed nationwide class action  
settlement (the "Settlement"), (2) approval of the manner and form of notice of the  
Settlement, (3) approval of claim forms, and (4) establishment of a proposed schedule for  
final approval of the Settlement. This motion is based on the Memorandum of Points and  
Authorities incorporated herein, all documents on file in this action, and upon such oral  
argument as may be presented at the time of any hearing.

## MEMORANDUM OF LAW

Plaintiffs Michael Holman, Robert Perrotta, Kevin Wilhelmy, Matthew Arnold, Christopher Korte and Deborah Pechacek ("Plaintiffs") and Defendant Student Loan Xpress, Inc. ("SLX") jointly move pursuant to Rule 23(e) for (1) preliminary approval of a proposed nationwide class action settlement (the "Settlement"), (2) approval of the manner and form of notice of the Settlement, (3) approval of claim forms, and (4) establishment of a proposed schedule for final approval of the Settlement.<sup>1</sup>

The Settlement provides extraordinary benefits to the Settlement Class in the form of substantial debt forgiveness and other relief relating to private, non-government guaranteed student loans. Plaintiffs in this action are (1) former students who were enrolled at Silver State Helicopters, LLC ("Silver State"), a helicopter pilot training school that ceased operations and declared bankruptcy on February 4, 2008, and whose outstanding student loans are held by SLX, and (2) persons who cosigned their loans.<sup>2</sup> Under the Settlement, the Settlement Class will be eligible to receive debt forgiveness of between twenty and seventy-five percent (20-75%) of their loans, depending on the number of Federal Aviation Administration ("FAA") flight certifications received while enrolled at Silver State. In particular, approximately eighty-five percent (85%) of the Settlement Class will be eligible to receive debt forgiveness equal to sixty or seventy-five percent (60 or 75%) of their existing loan obligations. The Settlement also provides numerous additional benefits to the

---

<sup>1</sup> Unless defined otherwise herein, capitalized terms in this motion have the same meaning given to them in the Settlement Agreement. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

<sup>2</sup> Under the terms of the loans, the Borrower and the Cosigner are equally responsible for repayment of the loans.

Settlement Class, including, forgiveness of all interest that would have accrued from the date of Silver State's closure until a date that is shortly after final approval, lower interest rates, notification to credit reporting bureaus, and a refund for early repayment.

The total potential value of the benefits being made available to Settlement Class Members is more than \$130,000,000. These benefits were achieved only after intense and protracted negotiations and three full-day mediation sessions before Hon. William Cahill (Ret.) and have been achieved in the face of substantial legal and factual defenses to the claims asserted in this action, including on grounds of federal preemption.

Significantly, ninety percent (90%) of the Settlement Class – persons who, based on readily accessible information, fall within the definition of the Class (“Identified Class Members”) – will receive the Settlement’s benefits automatically without having to submit even a claim form. The remaining ten percent (10%) of the Settlement Class – persons whose membership in the Settlement Class cannot be readily determined based on available records (“Potential Class Members”) – need only execute a simple claim form averring under penalty of perjury that they are in the Settlement Class. Moreover, the benefits will be made available to Qualified Class Members (defined to include all of the Identified Class Members plus those Potential Class Members who submit timely claim forms) without the need to provide detailed documentation to support their claims. Thus, the procedural means of delivering the substantial settlement benefits are extremely user-friendly.

As noted above, the total potential value of the benefits being made available under the Settlement – more than \$130,000,000 million – speaks for itself. The Settlement

has received support from Attorneys General from twelve (12) states (including the Florida Attorney General) who were investigating the business practices of Silver State and the events relating to its closure, plaintiffs' counsel in related litigation and from individual counsel for the majority of Class Members. In addition, the Settlement will resolve several pending and threatened class and collective actions. In sum, the Settlement is fair, reasonable, and adequate, conserves private and judicial resources, and far exceeds the standards for both preliminary and final approval.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

**A. Silver State Helicopters, LLC**

Silver State was a private vocational school that offered helicopter pilot training and certification. At the time of its closure in February 2008, Silver State operated approximately thirty-four schools in seventeen different states and had thousands of enrolled students.

Plaintiffs allege that Silver State generally told prospective students that they could graduate from its program in approximately twelve to eighteen months. Tuition to attend Silver State was typically \$69,900. Silver State entered into written contracts with its students known as Training Services Agreements, under which Silver State agreed to provide students with up to 18 months of training. The Training Service Agreements provided for ground training, flight training, and flight certifications. As a general matter, Silver State offered six helicopter pilot certifications or ratings. Four of those certifications or ratings were approved by the FAA (the FAA-approved certifications or ratings shall be referred to as "FAA Certifications"): (a) Private Pilot Certification (rotorcraft-helicopter), which allows a

pilot to fly alone at low altitude during the day in good weather; (b) Commercial Pilot Certification (rotorcraft-helicopter), which allows a pilot to carry passengers at low altitude in good weather; (c) Instrument Rating (helicopter), which allows a pilot to fly at higher altitudes, at night, and in inclement weather; and (d) Certified Flight Instructor Certification (rotorcraft-helicopter), which allows a pilot to train others. The two non-FAA Certifications were designed to enhance students' employment prospects: (1) external load proficiency, which allows a pilot to work in certain industries, such as logging; and (2) turbine transition, which demonstrates experience operating turbine-powered helicopters.

**B. Student Loan Xpress, Inc.**

SLX marketed and serviced educational loans to students and their parents, including non-federally guaranteed or "private" loans. Between August 2005 and September 2007, SLX marketed private loans to students of Silver State. Liberty Bank, N.A. ("Liberty Bank"), an Ohio-based national bank, originated and funded the loans to Silver State students. All of the Loan Application/Master Promissory Notes contained a choice-of-law clause providing that disputes would be governed by Ohio and federal law. Pursuant to an agreement, after funding the Silver State loans, Liberty Bank sold its interest in the loans to SLX. American Education Services ("AES"), an unaffiliated third-party loan servicer, services the Silver State loans for SLX.

**C. The Closure of Silver State And Subsequent Litigation**

On February 4, 2008, Silver State filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, in the United States Bankruptcy Court for the District of Nevada, Case No. 08-10936 (MN) ("Silver State

Bankruptcy Case”).<sup>3</sup> Concurrent with that filing, Silver State ceased operations and closed its helicopter pilot training academies throughout the United States.

More than 1,000 student borrowers – a number of whom are Class Members – filed proofs of claim in the Silver State Bankruptcy Case. In addition, some former Silver State students filed lawsuits in various jurisdictions across the country against SLX and other entities seeking to, among other things, prohibit lenders or holders of their Silver State loans from taking any action to enforce or collect upon the loans. The Settlement, with support from twelve (12) State Attorneys General and counsel representing a majority of students, is expected to resolve nearly all of the claims and potential claims that could be asserted against SLX by students who were enrolled at Silver State at the time of its closure and those individuals who cosigned their loans.<sup>4</sup>

**1. The Holman Action**

The case at bar was the first putative class action filed relating to the closure of Silver State. On or about February 13, 2008, Michael Holman, represented by Class Counsel Christopher Casper of James, Hoyer, Newcomer & Smiljanich, P.A., filed this putative nationwide class action on behalf of himself and other student-borrowers who were attending Silver State when the school ceased operations on February 4, 2008. The original complaint initially asserted claims against Liberty Bank, which originated and funded loans

---

<sup>3</sup> On that same date, Silver State Service Corp., Silver State’s parent corporation, also filed a voluntary petition for relief in the United States Bankruptcy Court for the District of Nevada entitled *In re Silver State Service Corp.*, Case No. 09-10935 (MN).

<sup>4</sup> The Settlement Class does not include students who dropped out of or graduated from Silver State prior to its closure or the cosigners of their loans. These individuals are not similarly situated with Settlement Class Members because their claims are subject to additional factual and legal defenses.

to Silver State students and then sold them to SLX. After learning that the loans had been sold to SLX, Plaintiff Holman dismissed Liberty Bank and filed an amended complaint on June 5, 2008 naming SLX as the only defendant. Based on the Ohio choice-of-law clause in the borrowers' loans, the amended complaint asserted a single cause of action for violation of Ohio's Retail Installment Sales Act ("RISA"), Ohio Rev. Code § 1317.032(C). Through his RISA claim, Plaintiff Holman sought to assert claims and defenses against SLX that he and all other putative class members possess against Silver State (most specifically, that the school allegedly did not provide the agreed-upon training and education) as a basis for seeking debt forgiveness and recovery of payments made on the loans.

In connection with the settlement, Plaintiffs and Class Counsel filed a Second Amended Complaint on October 27, 2009. The Second Amended Complaint is brought on behalf of student borrowers and their cosigners and asserts claims for violation of RISA, aiding and abetting fraud, and negligent misrepresentation. The Second Amended Complaint seeks rescission of the loans, actual damages, punitive damages, and injunctive relief.

## **2. The Kilgore Action**

The second putative class action, *Matthew Kilgore, et al. v. KeyBank National Association, et al.*, Case No. C-08-02958-TEH ("*Kilgore*"), was filed on or about May 12, 2008. Plaintiff Matthew Kilgore and others, represented by Class Counsel Andrew August of the Pinnacle Law Group, LLP, filed *Kilgore* as a California-only putative class action against certain entities unaffiliated with SLX who originated, funded, and/or serviced loans



of Silver State students.<sup>5</sup> On May 16, 2008, plaintiffs filed an amended complaint adding SLX, and its loan servicer, AES, as additional defendants.

On June 11, 2008, plaintiffs in *Kilgore* filed a Second Amended Complaint. As with the prior complaints, the Second Amended Complaint was brought on behalf of California residents who were attending Silver State at the time of its closure in February 2008 and their cosigners. The Second Amended Complaint alleged that SLX did not include in its Promissory Notes the notice described in the Federal Trade Commission's ("FTC") Holder Rule – the FTC Holder Notice, 16 C.F.R. § 433.2 – and also that SLX unlawfully facilitated Silver State's acceptance of loan proceeds despite Silver State's failure to have included the FTC Holder Notice in its Training Services Agreements. As a result, the Kilgore plaintiffs contended that SLX violated California Business and Professions Code Section 17200 *et seq.* (the "UCL claim") and aided and abetted Silver State's fraud. Plaintiffs in *Kilgore* sought injunctive relief prohibiting defendants from taking action to enforce or collect upon the loans of putative class members. On June 13, 2008, the action was removed, and it is pending in the United States District Court for the Northern District of California (Hon. Thelton Henderson). SLX has not yet responded to the Complaint, and the parties have not engaged in significant litigation activity because of the settlement negotiations that led to this Settlement.

### 3. The *Mason* Action

The third putative class action, *Christopher Mason, et al. v. KeyBank National Association, et al.*, Case No. A 565943 ("*Mason*"), was filed on or about June 23, 2008.

---

<sup>5</sup> These other entities are not parties to the Settlement, and any claims relating to loans originated, funded, serviced, or held by them are not covered or released by the Settlement.

Plaintiff Glenn Davis and others, represented by Class Counsel Andrew August of the Pinnacle Law Group, LLP, filed *Mason*, a Nevada-only putative class action. The *Mason* complaint was substantially similar to the one filed in *Kilgore* and asserted causes of action against SLX, AES, and certain other unaffiliated entities who originated, funded, and/or serviced loans of Silver State students for (1) violation of Nevada's deceptive trade practices statute, and (2) Aiding and Abetting Fraud. The plaintiffs sought injunctive relief prohibiting defendants from taking action to enforce or collect upon the loans of putative class members. On September 8, 2008, the plaintiffs dismissed *Mason* without prejudice and did not re-file because of the pendency of settlement negotiations that led to this Settlement.

#### **4. The *Shealy* Action**

The fourth putative class action, *Drayton Shealy v. Student Loan Xpress, Inc. and Liberty Bank, N.A.*, Case No. 2008-CP-32-02978 ("*Shealy*"), was filed on or around July 22, 2008. Plaintiff Drayton Shealy, represented by D. Michael Kelly of the Mike Kelly Law Group, LLC, filed *Shealy*, a South Carolina-only putative class action, against SLX and Liberty Bank, asserting nine different causes of action, including (1) violation of 16 C.F.R. 433 (the FTC Holder Rule), (2) negligence per se, (3) negligence, (4) fraud, (5) negligent misrepresentation, (6) breach of contract, (7) unjust enrichment, (8) negligence per se (violation of South Carolina Unfair Trade Practices Act), and (9) rescission. Plaintiff sought rescission of the loans, actual damages, and punitive damages.

On October 7, 2008, because of the ongoing settlement discussions in the *Holman*, *Kilgore*, and *Mason* actions, the parties stipulated to a temporary stay of the *Shealy* action, which the District Court granted. The stay remains in place. Plaintiffs' counsel

stipulated to these stays after being informed of the terms of the Settlement, so the parties could proceed with the Settlement and his individual clients could decide whether to remain in the Settlement Class or opt out.

**5. The Hyatt Action**

*Melissa Hyatt, et al. v. Student Loan Xpress, Inc., et al.* (“Hyatt”), was filed on or around August 17, 2009. *Hyatt* is brought by four former Silver State students and is not a collective action (*i.e.*, not a class action). Plaintiffs are represented by Patrick J. Kang of the Premier Law Group PLLC. The complaint asserts a single claim for violation of the Washington Consumer Protection Act against SLX, AES, and Liberty Bank. On September 18, 2009, *Hyatt* was removed, and it is currently pending in the United States District Court for the Western District of Washington. Defendants responded to the complaint on October 8, 2009.

**6. Potential Class And Mass Actions**

The parties are aware of at least three other possible class or collective actions arising out of the closure of Silver State.

**a. Potential Utah State Class Action**

Class Counsel, Andrew August, who filed *Kilgore* and *Mason*, intends to file a Utah-only class action (and possibly other state-only class actions) if the Settlement is not approved.

**b. Potential Mass Adversary Action**

An attorney in California, Michael Berger, filed a Notice of Appearance in the Silver State Bankruptcy Case stating that he represents more than 1,200 former Silver State

students and that he intends to file an action against various entities, including SLX, seeking forgiveness of amounts owed on loans made to students of Silver State. On June 11, 2008, Mr. Berger claimed to represent more than 1,300 former Silver State students, at least 1,000 of whom allegedly are borrowers under loans held by SLX. To date, Mr. Berger has refrained from filing an action. Mr. Berger supports the terms of this Settlement because it will resolve the claims of his SLX clients who were attending Silver State at the time of its closure. *See* Declaration of Michael Jay Berger.<sup>6</sup>

## **II. THE PROPOSED SETTLEMENT**

The Settlement is the product of extremely contentious and protracted negotiations and would not have been achieved without the able assistance of a dedicated, experienced mediator, retired California Superior Court Judge William J. Cahill (Ret.) of JAMS, one of the nation's leading providers of neutral mediators and arbitrators, which

---

<sup>6</sup> In addition to the pending and threatened actions described above, SLX entered into confidential settlements to resolve the claims of 39 putative class members who filed two other matters. The first was entitled *Jonas Caney v. Jerry Airola, et al.*, ADV 2008-141, and was filed on February 15, 2008 in the Montana First Judicial District Court, Lewis And Clark County. Plaintiff asserted claims sounding in fraud, negligence, and contract and sought compensatory and exemplary damages, equitable and injunctive relief, and attorneys' fees and costs. The action was removed to federal court. Shortly thereafter, the action was dismissed with prejudice following a confidential settlement.

The second was a collective lawsuit entitled, *Mark Elrod, et al. v. Jerry M. Airola, et al.*, Civil Case No. 08-A-10868-1, which was filed on or around July 25, 2008 in the State Court of Cobb County, State of Georgia (the "Elrod Action"). The Elrod Action asserted various causes of actions, including claims sounding in fraud, negligence, contract, and under state consumer protection statutes. The plaintiffs in the Elrod Action sought compensatory, exemplary, and statutory damages, equitable and injunctive relief, and attorneys' fees and costs. On December 29, 2008, plaintiffs dismissed the Elrod Action with prejudice as to defendants SLX, AES, Pennsylvania Higher Education Assistance Agency, Inc. ("PHEAA"), and Liberty Bank, as a result of a confidential settlement.

offers specialized dispute resolution services for class actions (the "Mediator").<sup>7</sup>

Furthermore, Plaintiffs and Class Counsel determined to enter into the Settlement only after their own extensive independent investigation and analysis and securing the right to conduct confirmatory discovery. The benefits that will be made available to Qualified Class Members render the Settlement more than fair, reasonable, and adequate, and the Settlement therefore serves their best interests in obtaining substantial and immediate relief.

**A. Settlement Negotiations**

Before any settlement discussions, Class Counsel gathered information about the underlying facts, events, and issues leading up to the closure of Silver State, including by interviewing numerous witnesses, reviewing substantial public and other records, reviewing certain Silver State books, records, and other documents obtained from James F. Lisowski, Sr., the Chapter 7 Trustee appointed in the Silver State bankruptcy case (the "Bankruptcy Trustee"), and retaining independent experts and investigators. As part of their efforts, Class Counsel engaged in a prolonged but successful dispute (which included contested motion practice) with the Bankruptcy Trustee to obtain a copy of Silver State's entire computer system and hard copy files.<sup>8</sup> Class Counsel also performed an extensive analysis of potential claims and defenses.

Starting in approximately June 2008, the parties began intensive, arms-length negotiations with a view toward achieving substantial benefits for the Settlement Class and

---

<sup>7</sup> A copy of Judge Cahill's resume is attached to the declaration of Christopher Casper ("Casper Decl.") in support of this motion.

<sup>8</sup> As a result of this effort, Class Counsel has assembled, at a cost in excess of \$50,000, what class counsel believe to be a complete mirrored version of Silver State's computer system as of the date it was seized by the Bankruptcy Trustee.

globally resolving all of the claims and potential claims against SLX. During the course of the protracted negotiations, the parties and their respective counsel participated in three full days of mediation on August 21, September 23, and December 10, 2008 in San Francisco, California, before the Mediator.

The first mediation session took place on August 21, 2008, lasted nearly twelve hours, and included multiple face-to-face conferences between the parties. Despite the presence and active involvement of the Mediator, the mediation was extremely contentious. The session ended without a settlement or, indeed, much hope of one in the future. Casper Decl. ¶ 8. Even though a second mediation session was already scheduled, the parties were so far apart after the first mediation session that Class Counsel informed the Mediator that it would be unproductive to proceed with the second session. The Mediator, however, prevailed upon the parties to continue to discuss settlement and attend the second mediation session.

The second mediation session on September 23, 2008, like the first, involved very heated negotiations. The parties exchanged multiple offers and counter-offers, and repeatedly conferred face-to-face under the guidance and direction of the Mediator. The parties made substantial progress towards settlement, but, in the end, still could not reach an agreement. As a result, the parties left the second mediation session fully expecting and prepared to resume litigation. *Id.* ¶ 9.

After the second mediation session had concluded unsuccessfully, the Mediator circulated a “mediator’s proposal” intended to bridge the gap between the parties’ positions. Believing acceptance to be in their respective best interests, the parties adopted the

Mediator's proposal. The parties commenced drafting the necessary papers to document the Settlement and scheduled a third mediation session for December 10, 2008 to address attorneys' fees, costs, expenses, and service awards for the named plaintiffs. *Id.* ¶¶ 10-11.

However, during the drafting of settlement papers, the parties reached an impasse on several additional issues pertaining to the relief that would be provided to the Settlement Class. As a result, the parties devoted the first half of the third mediation session to those additional issues. Only after those issues were resolved – such that there was agreement on all of the material terms of the Settlement as to the putative class – the parties then turned to attorneys' fees, costs, expenses, and service awards.

Despite hours of negotiations, the parties could not agree on either the amount of or method for calculating reasonable attorneys' fees, costs, and service awards to the named plaintiffs. The December 10, 2008 mediation session ended with the parties at an impasse. *Id.* ¶ 14.

Approximately a week later, the Mediator circulated another “mediator's proposal” to break the parties' impasse. The parties accepted the Mediator's proposal as to the amount of attorneys' fees, costs, and service awards as a reasonable compromise. *Id.* ¶ 15.

Shortly thereafter, the parties turned back to drafting the documents necessary for the Settlement. As this process was ongoing, SLX engaged in discussions with the State Attorneys General investigating Silver State and the events relating to its closure. In connection with these discussions, the parties agreed to modify the proposed settlement by (1) increasing the total amount of available debt forgiveness for members of Subclass One

from seventy percent to seventy-five percent, and (2) extending the time period for the early repayment refund from two years to five years. Twelve (12) State Attorneys General support the proposed Settlement, and have agreed to release their claims against SLX provided Class Members are offered the benefits of the proposed Settlement.

**B. The Settlement Terms**

**1. Definition Of The Settlement Class**

The Settlement provides for the certification of a Settlement Class, for settlement purposes only, defined as:

“Class” refers to (a) all persons who obtained a loan originated by Liberty Bank to finance the payment of tuition to Silver State, whose loan is held by Student Loan Xpress, Inc. as of the Preliminary Approval Order Date, and who were enrolled at Silver State as of February 4, 2008 and (b) all persons who cosigned such loans.

Settlement Agreement, § 1.8.

The Settlement also provides that the Settlement Class shall include six Subclasses, also certified for settlement purposes only: (1) “Subclass One” consists of Class Members who did not obtain any FAA Certifications while enrolled at Silver State; (2) “Subclass Two” consists of Class Members who obtained one FAA Certification while enrolled at Silver State; (3) “Subclass Three” consists of Class Members who obtained two FAA Certifications while enrolled at Silver State; (4) “Subclass Four” consists of Class Members who obtained three FAA Certifications while enrolled at Silver State; (5) “Subclass Five” consists of Class Members who obtained four FAA Certifications while enrolled at Silver State; and (6) “Subclass Six” consists of Class Members who are Cosigners of Loans. Settlement Agreement, §§ 1.62-1.67.



Excluded from the Class are (i) any Borrower or Cosigner whose loan has a zero balance as of the Preliminary Approval Order Date; (ii) any Borrower or Cosigner who would have no balance owing on the loan as of the Preliminary Approval Order Date as a result of the unconditional and conditional debt forgiveness made available under the Settlement; (iii) any Borrower or Cosigner who has a Chapter 7, 11 or 13 case pending as of the Preliminary Approval Order Date, and the corresponding Borrower or Cosigner of such person; (iv) any Borrower or Cosigner who validly requests exclusion therefrom in accordance with the procedures ordered by the Court; (v) any Borrower or Cosigner who executed a release to resolve his/her potential claims against SLX arising out of Silver State on or before the Preliminary Approval Order Date, and the corresponding Borrower or Cosigner of such person; and (vi) any Borrower or Cosigner included on a government list of known or suspected terrorists or other individuals, entities or organizations of concern, including persons appearing on the United States Department of the Treasury, Office of Foreign Assets Control List of Specially Designated Nationals and Blocked Persons, and the corresponding Borrower or Cosigner of such person. Settlement Agreement, § 1.8.

## **2. Settlement Benefits**

The Settlement provides Qualified Class Members with an extraordinary package of debt restructuring, debt and interest forgiveness, lower interest rates, financial incentives for early repayment, and other benefits.

Some of the Settlement benefits (the unconditional debt forgiveness and the non-accrual of interest from February 1, 2008 to shortly after Final Approval) become

effective immediately upon the Final Effective Date of the Settlement.<sup>9</sup> Some of the other Settlement benefits (the conditional debt forgiveness, the lower interest rate, and the refund for early repayment) are conditioned upon each Qualified Class Member making his/her Reduced Monthly Payments<sup>10</sup> within ninety (90) days after they become due. Thus, if a Qualified Class Member fails to make a Reduced Monthly Payment within ninety (90) days of its due date as is required under the Settlement Agreement, then such Qualified Class Member will lose eligibility for the conditional benefits provided under the Settlement and shall become an Ineligible Class Member.<sup>11</sup>

---

<sup>9</sup> The "Final Effective Date" refers to the date by which the last of the following has occurred: (a) all conditions of Settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed, or all such appeals have been voluntarily or involuntarily dismissed or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure or the United States Supreme Court has either affirmed the final judgment of the appellate court or denied certiorari with respect thereto. Settlement Agreement, § 1.24.

<sup>10</sup> The Reduced Monthly Payment refers to the amount that each Qualified Class Member shall be required to pay to SLX in order to remain eligible to receive the debt forgiveness and reduced interest rates conditionally provided under the Settlement. The Reduced Monthly Payment shall be based on each Qualified Class Member's Restructured Loan, calculated to fully amortize the payment of the Restructured Loan plus interest accruing at the Reduced Interest Rate or Original Interest Rate, whichever is lower, at the expiration of 240 months from the Repayment Date. For situations involving a Restructured Loan with a Borrower and a Cosigner, only one Reduced Monthly Payment shall be paid to SLX, and such Reduced Monthly Payment may be paid by either the Borrower or the Cosigner. Settlement Agreement, § 1.44.

<sup>11</sup> In addition, all late payments (payments not made within fifteen (15) days of their respective due dates) remain subject to all applicable fees, charges, and interest under the original terms of the Loans.

a. **Debt Forgiveness Based On The Number Of FAA Certifications**

The Settlement provides Qualified Class Members with immediate, unconditional debt forgiveness and the right to restructure their loans and to obtain additional, conditional forgiveness. The value of the unconditional and conditional debt forgiveness is more than \$110,000,000.

Under the settlement, a calculation will be made to determine each Qualified Class Member's Debt (i.e., the loan principal plus accrued interest as of the date Silver State ceased operations). The unconditional and conditional debt forgiveness then will be calculated based on the number of FAA Certifications received while at Silver State, as follows:

- **Subclass One:** Qualified Class Members who received zero FAA Certifications are eligible to receive forgiveness of **75%** of their Debt – 7.5% forgiveness effective immediately upon the Final Effective Date and 67.5% forgiveness conditioned on timely repayment of the Restructured Loan.
- **Subclass Two:** Qualified Class Members who received one FAA Certification are eligible to receive forgiveness of **60%** of their Debt – 6% forgiveness effective immediately upon the Final Effective Date and 54% forgiveness conditioned on timely repayment of the Restructured Loan.
- **Subclass Three** - Qualified Class Members who received two FAA Certifications are eligible to receive forgiveness of **47.5%** of their Debt – 4.75% forgiveness effective immediately upon the Final Effective Date and 42.75% forgiveness conditioned on timely repayment of the Restructured Loan.
- **Subclass Four** - Qualified Class Members who received three FAA Certifications are eligible to receive forgiveness of **30%** of their Debt – 3% forgiveness effective immediately upon the Final Effective Date and 27% forgiveness conditioned on timely repayment of the Restructured Loan.

- **Subclass Five** - Qualified Class Members who received four or more FAA Certifications are eligible to receive forgiveness of **20%** of their Debt – 2% forgiveness effective immediately upon the Final Effective Date of the Settlement and 18% forgiveness conditioned on timely repayment of the Restructured Loan.
- **Subclass Six** – Cosigners are eligible to receive the same aggregate percentage of unconditional and conditional debt forgiveness that the Qualified Subclass Six Member's corresponding Borrower is eligible to receive.

Settlement Agreement, §§ 3.3.2.1-3.3.2.6.

Another of the significant benefits of the Settlement is that it restructures the outstanding obligations of Qualified Class Members, such that they will be entitled to make much lower monthly payments on the remaining amounts on their loans. That is, the Reduced Monthly Payments shall be based on each Qualified Class Member's Restructured Loan, calculated to fully amortize payment at the expiration of 240 months from the Repayment Date. (The Restructured Loan is the Debt of each Qualified Class Member reduced by (a) the unconditional debt forgiveness provided upon the Effective Date, (b) the conditional debt forgiveness that will become effective upon repayment of the Restructured Loan, and (c) any payments made prior to the Final Approval Order Date.)

Ineligible Class Members will not receive the conditional benefits provided under the Settlement.

3. **Forgiveness Of Interest And Lower Interest Rates**  
a. **Forgiveness Of Interest That Would Have Accrued Pending Final Approval**

In addition to the unconditional and conditional debt forgiveness described immediately above, SLX will forgive unconditionally all interest that would have accrued on Qualified Class Members' Loans between February 1, 2008 and the earlier of the Final Effective Date or sixty (60) days after entry of the order granting final approval (the "Interest

Re-Accrual Date”). This interest forgiveness accounts for savings that are conservatively estimated to be at least \$20,000,000.

**b. Lower Interest Rates**

Another benefit of the Settlement for Qualified Class Members is that when interest begins to re-accrue, it will do so at the lower of either (a) the Qualified Class Member’s Original Interest Rate or (b) at a rate three percent (3%) lower than the Original Interest Rate, provided that interest rate in (b) will never accrue at a rate lower than six percent (6%). Settlement Agreement, § 3.3.6.2. Ineligible Class Members will not receive this three percent (3%) reduction. Settlement Agreement, § 3.3.8.

**c. Incentive For Early Repayment**

Even though the Settlement Class Members’ Loans do not provide any incentive for early repayment, the Settlement further rewards Qualified Class Members who repay their Restructured Loan within five years of their Repayment Date as long as they do not become Ineligible Class Members. Indeed, the Settlement offers an incentive for such early repayment in the form of a refund equal to two-and-one-half percent (2.5%) of each such Qualified Class Member’s Restructured Debt. Settlement Agreement, § 3.3.5. For the average Qualified Subclass One Member, this would result in an additional benefit of more than \$400 per person.

**d. Credit Reporting**

To the extent SLX has reported information to credit reporting agencies (Equifax, Experian, Innovis, or TransUnion) regarding the loans of Qualified Class Members, SLX shall contact such agencies to request that they remove their respective

tradelines. Settlement Agreement, § 3.4.1. This feature of the Settlement will provide an important benefit to Qualified Class Members who have had credit reporting.

e. **Attorneys' Fees, Costs, And Expenses As Well As Service Awards To The Class Representatives**

Attorneys' fees, costs, and expenses often eat up a substantial portion of the relief that would otherwise be made available to class members. That is not the case here. Under the proposed Settlement, SLX has agreed to pay attorneys' fees, costs, and expenses awarded by the Court up to four million nine hundred and seventy thousand dollars (\$4,970,000.00).<sup>12</sup> Settlement Agreement, § 3.4.2. The amount awarded as attorneys' fees, costs, and expenses will not detract from the benefits available to the Settlement Class. The Settlement also provides that the Class Representatives and Class Counsel may apply for service awards for each of the Class Representatives – not to exceed five thousand dollars (\$5,000.00) per Class Representative, and thirty thousand dollars (\$30,000.00) in the aggregate, and that any such awards shall be paid by SLX. Settlement Agreement, § 3.4.3.

f. **Notice And Administration Costs**

As with attorneys' fees, costs, expenses, and service awards, SLX has agreed to pay all costs of settlement notice and settlement administration, regardless of the outcome of final approval. Therefore, the costs of notice and administration will not diminish the relief provided to the Settlement Class. Settlement Agreement, § 3.4.5.

---

<sup>12</sup> The parties reached agreement on these terms only after they had reached agreement on the substantive relief for the Settlement Class.

**4. Notice Of The Settlement And Objection And Opt Out Rights**

The Settlement contains a procedure designed to ensure individual notice by First Class U.S. Mail to each member of the Settlement Class. All Settlement Class Members will be provided direct mail notice of the Settlement and will have the right to object to the Settlement or exclude themselves from the Settlement Class. Settlement Agreement, §§ 8.3, 8.5-8.6.

Before mailing the Notice, SLX will compile last known addresses for Settlement Class Members based on its readily accessible records as well as those of the loan servicer, AES, and provide that information to the Settlement Administrator. The Settlement Administrator will access the National Change of Address ("NCOA") Database to update the address information. If the NCOA Database indicates that a last known address is invalid or otherwise undeliverable, the Settlement Administrator will perform one skip-trace procedure. Furthermore, if a Notice or Claim Form is returned as undeliverable within twenty (20) days of the initial mailing, the Settlement Administrator will perform one skip-trace procedure in an effort to obtain a new valid address for mailing. Settlement Agreement, § 8.3.5.

**5. Consideration For SLX Under The Settlement**

In exchange for providing the benefits outlined above, all Settlement Class Members will provide a broad release of claims against SLX, AES, PHEAA, Liberty Bank, CIT Group Inc., and other identified entities, and each of their past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, trustees, shareholders, employees, agents, attorneys, auditors,

accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf. Settlement Agreement, § 4.2.

In addition, SLX will receive an assignment of the claims that Settlement Class Members may have against Silver State, Silver State Service Corp., the Bankruptcy Trustee, EOS Partners, LLP, and their respective parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf (including Jerry Airola and Steve Pickett) ("Assigned Claims"). Settlement Agreement, § 6. Each Settlement Class Member also will transfer to SLX the Proof of Claim that the Settlement Class Member filed (or could file) in the Silver State Bankruptcy Case ("Transferred Claims"). Settlement Agreement, § 7.<sup>13</sup> The assignment and transfer provisions are appropriate here, particularly because of the derivative nature of the claims asserted and because SLX – which is unaffiliated with Silver State – likely stands to bear the greatest loss from Silver State's closure.

The release, assignment, and transfer shall be provided by (and be effective as to) all Settlement Class Members, regardless of whether they submit a claim form (in the

---

<sup>13</sup> In the event SLX pursues the Transferred Claims and recovers, SLX shall pay to applicable Class Members any amounts recovered that are in excess of (a) the total amount of debt and interest forgiveness provided to and still available to Qualified Class Members and (b) the amount of attorneys' fees, costs and expenses incurred by SLX in connection with pursuing or collecting upon the Transferred Claims in the Silver State Bankruptcy Case. Settlement Agreement, § 7.3.



case of Potential Class Members) or lose their eligibility to receive the Settlement's conditional benefits.

### **III. THE SETTLEMENT SHOULD RECEIVE PRELIMINARY APPROVAL**

The Settlement represents a more than fair, reasonable, and adequate resolution of complex claims and should be approved.

#### **A. Criteria For Preliminary Approval**

Approval of a class action settlement follows a two-step process. Manual for Complex Litigation (Fourth) § 21.632 (2004). In the first step, the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice to the class; in the second, the court makes a final decision as to fairness. *Id.* For the initial evaluation, the "proposed settlement should be preliminarily approved if it is within the range of possible approval or, in other words, if there is probable cause to notify the class of the proposed settlement." *Fresco v. Auto Data Direct, Inc.*, No. 03-61063, 2007 U.S. Dist. LEXIS 37863, at \*11-12 (S.D. Fla. May 11, 2007) (internal quotations and alterations omitted).

To determine whether a proposed settlement is fair, reasonable, and adequate, courts first consider whether there is fraud or collusion and then weigh:

- (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

See *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Evaluation of these factors should be “informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.” *Id.* A trial court “should be hesitant to substitute his or her own judgment for that of counsel” regarding the fairness of a proposed settlement. *In re Smith*, 926 F.2d 1027, 1028 (11th Cir. 1991); *Ass’n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 467 (S.D. Fla. 2002) (recognizing that, “absent fraud,” a court “should be hesitant to substitute its own judgment for that of counsel”) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

**B. The Settlement Fully Satisfies The Criteria For Preliminary Approval**

The Settlement provides each and every member of the Settlement Class the opportunity to receive substantial benefits, which total more than \$130,000,000. It does so despite the numerous legal and factual defenses available to SLX on the merits, on class certification, and as to the amount of relief recoverable and the fact that SLX disclaims any responsibility for or participation in Silver State’s actions. At the same time, the Settlement is a compromise of disputed claims founded upon proposals developed by the well-respected Mediator. It accounts for the strengths and weaknesses of the claims of the Settlement Class as well as SLX’s defenses. As a result, the Settlement merits approval.

**1. There Is No Fraud Or Collusion By The Parties**

The Settlement is not the product of fraud or collusion. Plaintiffs and Class Counsel conducted an independent and wide-ranging investigation of the facts and the law before entering into negotiations. Casper Decl. ¶ 7. The negotiations were protracted and contentious. The parties at all times remained fully committed and prepared to litigate.

Indeed, all three mediation sessions ended with the parties expecting that this matter would have to be resolved through litigation. *Id.* ¶¶ 8, 9 and 14. The Settlement was saved by two separate “mediator’s proposals” from the Mediator – the first as to the benefits to be provided to the Settlement Class and the second as to attorneys’ fees, costs, expenses and service awards – that accounted for the positions taken by both sides. In other words, the Settlement is the product of arms-length negotiations between skilled advocates pursuing the interests of their clients. *See Dolby v. Butler & Hosch, P.A.*, No. 8:03-cv-2246-T-23TGW, 2006 WL 2474062, at \*5 (M.D. Fla. Aug. 25, 2006) (citing participation of mediator as “persuasive evidence that the settlement was the product of arms-length negotiations, and not collusion”); *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 675 (S.D. Fla. 2006) (citing use of mediator as evidence settlement was not collusive). Given the absence of fraud or collusion, Class Counsel’s strong endorsement of the Settlement weighs heavily in favor of granting approval. *See Ass’n for Disabled Americans, Inc.*, 211 F.R.D. at 467; *Strube*, 226 F.R.D. at 703; Casper Decl. ¶ 17.

**2. The Settlement Class Faces Substantial Risks Which Make The Likelihood Of Success At Trial Uncertain**

The Settlement Class faces substantial risks which make the likelihood of success at trial uncertain.

SLX has a number of serious and potentially dispositive defenses to claims by the Settlement Class. For example, SLX has asserted that the claims by the Settlement Class are preempted by the National Bank Act, and regulations issued by the Office of the Comptroller of the Currency thereunder, because the loans at issue were originated by a national bank (Liberty Bank), and as the subsequent holder of the loans, SLX is entitled to

the same preemption defenses as Liberty Bank. 12 U.S.C. § 24; 12 C.F.R. § 7.4008. Two district courts already have considered similar claims by former students of vocational schools that sought to assert claims and defenses they had against the schools to avoid repaying loans made by a national bank. In both cases, the courts dismissed the state law claims as preempted. *Abel v. KeyBank USA, N.A.*, 313 F. Supp. 2d 720, 729 (N.D. Ohio 2004); *Blanco v. Key Bank USA, N.A.*, No. 1:04CV230, slip op. at 20 (N.D. Ohio June 30, 2008).

Similarly, there is a body of case law rejecting Plaintiffs' argument that SLX had a duty to ensure that loans to Settlement Class Members contained the FTC Holder Notice. 16 C.F.R. § 433.2. Courts have held that only the "seller" – in this case Silver State – has a duty to provide the FTC Holder Notice and, in any event, that the FTC Holder Rule does not give rise to a private right of action. *See, e.g., Abel v. KeyBank USA, N.A.*, 2003 U.S. Dist. LEXIS 27175, at \*27-29 (N.D. Ohio Sept. 24, 2003); *Blanco*, No. 04CV230, slip op. at 18; *Crisomia v. Parkway Mortgage, Inc.*, 2001 Bankr. LEXIS 1469, at \*4 (E.D. Pa. Aug. 21, 2001) (recognizing that the "FTC Holder Rule is explicit in stating that the consequences of a failure to include the notice and notably incur a penalty is solely visited upon the seller"). As a result, SLX maintains that it cannot be held directly or derivatively liable for Silver State's alleged violations of the FTC Holder Rule.

SLX also has a number of grounds for challenging certification for purposes of litigation. For example, several of Plaintiffs' claims require proof of causation, deception, or reliance, which typically are difficult to establish on a classwide basis in the context of litigation. Likewise, a court could find that determining the value of the helicopter pilot

training provided by Silver State to each student would make litigation unmanageable. That is, SLX would argue that Plaintiffs would be unable to pursue their claims on a classwide basis for several separate and equally dispositive reasons, including because (a) numerous complex individualized issues of liability, causation and damages would defeat commonality and would necessarily predominate over common issues, and (b) class adjudication would not substantially benefit the parties or the Court given the complexity of the claims and the factual and legal defenses available to SLX.

If SLX prevailed on any of its legal, factual, or class certification arguments, then the Settlement Class would receive nothing. *See Fresco*, 2007 U.S. Dist. LEXIS 37863, at \*16 (recognizing that there “[o]bviously” is a risk of denial of certification for trial purposes). Significantly, SLX would argue—and a Court may agree—that any potential recovery by a member of the Settlement Class must be offset by the value of the materials received, the number of hours of ground training, the number of hours of flight training, the number of FAA Certifications, and the number of other proficiency certifications received by a student. Thus, even if members of the Settlement Class were to have prevailed on their claims, it is likely they would not have been completely relieved of their obligations to repay their loans to SLX. The Settlement is far preferable to the uncertainties of litigation, and this factor strongly favors preliminary approval.

3. **This Settlement Is On The High Range Of Possible Recovery And Far Above The Point Needed To Be Fair, Adequate And Reasonable**<sup>14</sup>

The relief provided under the Settlement is substantial by any measure, but particularly so here given the potential defenses available to SLX. "A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) (approving settlement where class received approximately 5.7% of litigation demand in settlement); *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1322-23 (S.D. Fla. 2005) (approving as fair settlement worth approximately 8-9% of the maximum possible recovery). In particular, the existence of strong defenses "makes the possibility of a low recovery quite reasonable." *Lipuma*, 406 F. Supp. 2d at 1323; *Borcea*, 238 F.R.D. at 673.

In this instance, the Settlement provides unconditional debt forgiveness worth more than \$11,000,000 and conditional debt forgiveness worth more than \$100,000,000. The conditional and unconditional forgiveness ranges from 75% percent for Subclass One Members, who did not obtain any FAA Certifications, to 20% for Subclass Five Members, who obtained four FAA Certifications.<sup>15</sup> Subclass Six Members are Cosigners, and will be eligible to receive the same Settlement benefits as their corresponding Borrowers. The graduated levels of debt forgiveness reflect that the FAA Certifications obtained by

---

<sup>14</sup> This Court, like others, typically considers these two settlement factors together. *See, e.g., Dolby v. Butler & Hosch, P.A.*, 2006 WL 2474062, at \*5 (M.D. Fla. Aug. 25, 2006); *Borcea*, 238 F.R.D. at 673-74.

<sup>15</sup> In addition to the reduction in monthly payments that will result from this debt forgiveness, the reduction in interest rates will further reduce the amount of the monthly payments Class Members will make following Final Approval.

Settlement Class Members represent tangible benefits conveyed by Silver State, rendering the claims of each successive Subclass weaker than and subject to greater defenses than those of the preceding Subclass. That is true even for Subclass One Members, most of whom attended Silver State for at least five months before its closure, and received ground training, simulator training, and flight hours. Moreover, the unconditional and conditional debt forgiveness is in addition to other significant benefits, including: (a) forgiveness of interest that would have accrued between February 4, 2008 and the Interest Re-Accrual Date; (b) lower interest rates; (c) a refund for early repayment; and (d) payment of notice costs, administration costs, attorneys' fees, costs, and expenses, and service awards.

In effect, under the Settlement, Qualified Settlement Class Members will not incur any expenses in connection with this litigation, will have avoided making payments and incurring any interest on their loans for nearly two years, will receive debt forgiveness and will be able to repay their Restructured Loans at the lower of their Original Interest Rate or Reduced Interest Rate. Settlement Class Members will be able to secure all of the conditional settlement benefits merely by making each Reduced Monthly Payment within ninety (90) days after its due date. Given the uncertainties and risks presented by this litigation, including that SLX could establish that all of the loans it holds are fully enforceable, and the likely delays before the Settlement Class could expect to receive any benefits from litigation (if it received any at all), this is a generous settlement by any standard and far above what would be needed to render the Settlement fair, adequate, and reasonable.

**4. The Settlement Avoids The Need For Highly Complex, Expensive, and Protracted Litigation**

Settlements provide immediate and certain benefits as opposed to “the vagaries of litigation,” which offer “the mere possibility of relief in the future, after protracted and extensive litigation,” including appeals. *Borcea*, 238 F.R.D. at 674 (internal quotations omitted). Providing a “relatively rapid” resolution of a dispute in and of itself is a “significant benefit” to a settlement class, particularly in complex cases, where litigation can take years to complete and deplete the resources of the parties. *Id.* at 674. Litigation is “a long way from the end” and the parties would need to undertake “time-consuming and expensive” proceedings such as formal discovery, class certification, trial, and appeal. *See Dolby*, 2006 WL 2474062, at \*5. Trials in class actions present particular burdens where class members reside in multiple forums; it is difficult and costly to coordinate their attendance at trial. *Borcea*, 238 F.R.D. at 674. The burdens of class litigation are heightened where the parties likely would call upon numerous experts. *Strube v. Am. Equity Investment Life Ins. Co.*, 226 F.R.D. 688, 698 (M.D. Fla. 2005).

There is no doubt that litigation of this action would have been lengthy and expensive for both sides. Given that the outstanding balances of Settlement Class Members loans exceeds \$175,000,000, in the aggregate, and the potentially significant impact a negative ruling could have on SLX, SLX was prepared and highly motivated to defend this action aggressively at every stage and, if necessary, through appeal. Similarly, Class Counsel were ready, willing, and able to litigate their claims vigorously. Indeed, Class Counsel has already spent more than \$100,000 in out-of-pocket expenses thus far. A trial in this matter would have required both sides to work through complicated and lengthy fact and



expert discovery regarding – and investigation, examination and analysis of – Silver State’s business practices and records, and the enrollment histories of the thousands of Settlement Class Members at the various Silver State schools around the country.

Accordingly, litigation of this matter through trial and appeal would have been lengthy and expensive. At the end of that process, the Settlement Class might have received nothing. Furthermore, even if the Settlement Class could have prevailed on the merits and certified a class, it likely would have had to wait several years to receive any relief. The size and complexity of this case thus favors granting preliminary approval.

**5. Plaintiffs And Members Of The Settlement Class Support Approval Of The Settlement**

Because “no notice has yet been provided to the class members,” this factor typically is not addressed until the hearing for final approval. *See, e.g., Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2007 U.S. Dist. LEXIS 52589, at \*46 (N.D. Ga. July 20, 2007) (recognizing that class members typically will not object until after receiving formal notice of a settlement). Based on informal discussions with Settlement Class Members, Plaintiffs and Class Counsel have heard overwhelmingly enthusiastic support for the Settlement. Casper Decl. ¶ 17. The Settlement also is supported by twelve (12) State Attorneys General, including Florida, California and Nevada, and has been endorsed by one attorney who was retained by over 1,000 students to look after their interests relating to the closure of Silver State and by another attorney who was retained by more than 250 students. Declaration of Michael Jay Berger, ¶ 7; Declaration of Daniel R. Reed, ¶ 7. As a result, to the extent this Court considers this factor at this stage of the proceedings, it too favors granting preliminary approval.

**6. The Settlement Was Reached After Extensive Investigation Of The Claims And Defenses**

“Certainly, courts favor early settlement.” *Lipuma*, 406 F. Supp. 2d at 1324 (approving early settlement of class action). Here, the Settlement was achieved only after Plaintiffs and Class Counsel “had undertaken extensive investigations of the claims and defenses ....” *Borcea*, 238 F.R.D. at 675. The parties exchanged substantial information about the factual and legal basis for the claims of the Settlement Class. Class Counsel also independently interviewed Settlement Class Members, reviewed public and private documents, retained private investigators, and obtained certain Silver State business records from Silver State’s Bankruptcy Trustee. Before, during, and after the negotiations, Class Counsel verified information being provided to them by Silver State and SLX relating to the claims and defenses in this action. As a result, “the stage of the proceedings at which the settlement was reached was sufficient to enable class counsel to fully investigate the strength of the claims and reasonably evaluate the risks and expenses facing the parties if a settlement was not reached.” *Borcea*, 238 F.R.D. at 675; *Lipuma*, 406 F. Supp. 2d at 1324 (approving early settlement where class counsel had “sufficient information to negotiate with”).

**IV. THE COURT SHOULD APPROVE THE MANNER OF CLASS NOTICE**

The direct mail notice program set forth in the Settlement provides the best notice practicable. Fed. R. Civ. P. 23(e)(1)(B). The proposed notice program, both in terms of the manner of dissemination and in its content, is a direct and effective way of apprising the Settlement Class of the terms of the Settlement. Upon the Court’s approval of the manner and form of notice, the Settlement Administrator will mail the Notice to the Settlement Class via First-Class U.S. Mail using the most current mailing address

information available from the records of SLX and/or AES, its loan servicer, the NCOA database and, if needed, the results of one to two skip-traces.

The parties have agreed on four different Notices, as follows: (1) one to Identified Class Members without cosigners; (2) one to Potential Class Members without cosigners; (3) one to Identified Class Members with cosigners; and (4) one to Potential Class Members with cosigners (collectively, the four Notices are referred to herein as the "Notice").<sup>16</sup> The Notice fairly apprises members of the Settlement Class of the terms of the Settlement and their rights. Consistent with models promulgated by the Federal Judicial Center, the Notice clearly and concisely explains for each Settlement Class Member: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class' claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the class any member who requests exclusion;<sup>17</sup> (vi) the time and manner for requesting exclusion; (vii) the binding effect of a class judgment on members under Rule 23(c)(3); and (viii) the number and types of FAA Certifications received. *See* Fed. R. Civ. P. 23(b)(2)(B).

In addition, the Notice sent to each Class Member will contain information regarding the number and the name of the FAA Certifications obtained by the Class Member or the Borrower for whom the Class Member cosigned the Loan, as reflected in the FAA's

---

<sup>16</sup> The parties agreed on four different Notice documents so that each is tailored to the particular circumstances of each category of Class Members.

<sup>17</sup> In situations involving a Loan with a Borrower and a Cosigner, if the Borrower elects to opt out, then the corresponding Cosigner will be deemed to have opted out, and if the Cosigner elects to opt out, then the corresponding Borrower shall be deemed to have opted out. Settlement Agreement, § 8.6.3.

publicly available records, and thus the percentage of debt forgiveness potentially available under the Settlement. The Notice also will advise each Class Member that he/she may dispute the number of FAA Certifications by submitting documentation to support a claim for greater debt relief and that if he/she does not dispute the number of FAA Certifications obtained, he/she will not be expected or required to submit documentation in support of his/her claim.

The forms of Notice are attached to the Settlement Agreement as Exhibits 1-4, and should be approved.

**V. THE COURT SHOULD APPROVE THE CLAIM FORM**

As noted above, the Settlement provides a simple and efficient mechanism for Settlement Class Members to secure relief. The Identified Class Members, who comprise approximately ninety percent (90%) of the Settlement Class, do not need to submit a Claim Form to receive the benefits available under the Settlement. That is because the parties were able to determine, based on a review of readily accessible information, including information available from SLX's business records, the business records maintained by AES and made available to SLX, and certain Silver State business records obtained by Class Counsel from Silver State's Bankruptcy Trustee, that the Identified Class Members were enrolled at Silver State when it ceased operations and thus fall within the definition of the Settlement Class.

The Potential Class Members – the remaining ten percent (10%) of the Settlement Class whose membership in the Settlement Class cannot be readily determined based on available records – will receive a Claim Form along with the Notice. There are two Claim Forms, one for Potential Class Members without cosigners and one for Potential Class

Members with cosigners. The simple, easy-to-understand Claim Form will ask Potential Class Members merely to verify under penalty of perjury that they were enrolled at Silver State as of February 4, 2008.<sup>18</sup> The proposed Claim Forms are attached to the Settlement as Exhibits 5 and 6, and should be approved.

#### **VI. PROPOSED SCHEDULE OF EVENTS**

Provided that the Court preliminarily approves the Settlement and grants Plaintiffs' concurrently filed motion for certification of a settlement class for settlement purposes only on or before November 3, 2009, the parties propose the following schedule of events leading to the final approval hearing:

- The parties request that the Court set a deadline of December 18, 2009 to disseminate the Class Notice (or such other date that is 45 days after Preliminary Approval);
- The parties request that the Court set a deadline of February 1, 2010 for members of the Settlement Class to file a claim, request exclusion from, or object to the Settlement (or such other date that is 45 days after the dissemination of Notice);
- The parties request that the Court set a deadline of March 3, 2010 for the parties to file papers in support of the Settlement and in response to any objections (or such other date that is 30 days after the deadline for objections and opt-outs); and

---

<sup>18</sup> In situations involving a Loan with a Borrower and a Cosigner, if the Borrower submits a Valid Claim, the claim shall be deemed submitted for the corresponding Cosigner, unless the Cosigner elects to opt out, and if the Cosigner submits a Valid Claim, the claim shall be deemed submitted for the corresponding Borrower, unless the Borrower elects to opt out. Settlement Agreement, § 9.2.1.

• The parties request that the Court schedule the final approval hearing for March 10, 2010 (or such other date that is approximately 82 days after the dissemination of Notice).

## VII. CONCLUSION

For the foregoing reasons, the parties jointly request that the Court preliminarily approve the Settlement, approve the form and manner of the Notice, approve the Claim Form, and adopt the proposed schedule leading to the final approval hearing.

Respectfully submitted,

s/ Christopher Casper  
Christopher Casper  
James, Hoyer, Newcomer & Smiljanich,  
P.A.  
One Urban Centre, Suite 550  
4830 West Kennedy Blvd.  
Tampa, Florida 33609  
ccasper@jameshoyer.com

s/ Andrew August  
Andrew August  
PINNACLE LAW GROUP, LLP  
425 California Street, Suite 1800  
San Francisco, California 94104  
aaugust@pinnaclelawgroup.com

s/ Jennifer Altfeld Landau  
Jennifer Altfeld Landau  
Robert M. Stone  
Sidley Austin LLP  
555 West Fifth Street, 40<sup>th</sup> Floor  
Los Angeles, CA 90013  
jlandau@sidley.com

**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and notification and service will be provided to counsel of record via the CM/ECF notification system.

s/ Christopher Casper  
Christopher Casper